TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 480.

CLARENCE MURPHY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED DECEMBER 20, 1899.

(17,594.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 3, 1900.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Salem, within and for the county of Essex, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Commonwealth of Massachusetts, plaintiff, and Clarence Murphy, defendant, on an indictment for embezzlement, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Clarence Murphy, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville Fuller, Chief Justice of the said Supreme Court, the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts,
Per BENJ. H. BRADLEE, *Deputy Clerk.*

Allowed by—

ALBERT MASON,
Chief Justice Superior Court.

1—480

2 COMMONWEALTH OF MASSACHUSETTS, } ss.:
Essex, }

And now here the judges of the superior court of the Commonwealth of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, E. B. George, clerk of said superior court, have hereto set my hand and the seal of said court this twenty-sixth day of December, A. D. 1899.

[Seal of the Superior Court.]

E. B. GEORGE, *Clerk.*

3 COMMONWEALTH }
vs.
CLARENCE MURPHY. }

Transcript of Record on the Superior Court of the Commonwealth of Massachusetts for the County of Essex.

Indictment.

At the superior court held at Salem, within and for the county of Essex, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-six, by adjournment from the fifteenth day of May, A. D. 1896, at Newburyport.

The jurors for the Commonwealth of Massachusetts present that Clarence Murphy, late of Salem, in said county of Essex, on the fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-two, at Salem, in said county of Essex, being then and there in the employment of a certain incorporated bank, to wit, the Salem savings bank, a corporation duly established under the laws of said Commonwealth, the said Clarence Murphy not being then and there an apprentice to the said Salem savings bank and not being a person under the age of sixteen years, did then and there, by virtue of said employment, have, receive, and take into his possession certain moneys to a large amount,

4 to wit, to the amount of one hundred dollars, of the value of one hundred dollars, of the properties and moneys of the said Salem savings bank, in the bank of the said Salem savings bank there situate being, and the said Clarence Murphy the said money then and there feloniously did embezzle and fraudulently convert to his own use, without the consent of the said Salem savings bank, whereby and by force of the statute in such case made and provided the said Clarence Murphy is deemed to have committed the crime of larceny in said bank; and so the jurors aforesaid upon their oath aforesaid do say and present that the said Clarence Murphy then and there, in manner and form aforesaid, the said money, of the properties and moneys of the said Salem savings bank, from the said Salem savings bank feloniously did steal, take,

and carry away in the bank aforesaid, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

(Thereafter follow sixty-four counts in all respects similar to the foregoing, except that the dates of the offences and the number of dollars alleged therein to have been embezzled are different.)

(Count 66.) And the jurors aforesaid on their oath aforesaid do further present that Clarence Murphy, late of Salem, in said county of Essex, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and ninety-two, at Salem, in said county of Essex, being then and there the clerk, servant, and agent of a certain incorporated company, to wit, the Salem
5 savings bank, a corporation duly established under the laws of said Commonwealth, the said Clarence Murphy not being then and there an apprentice to the said Salem savings bank and not being a person under the age of sixteen years, did then and there by virtue of said employment have, receive, and take into his possession certain moneys to a large amount, to wit, to the amount of two thousand dollars, of the value of two thousand dollars, of the property and moneys of the said Salem savings bank, and the said Clarence Murphy the said money then and there feloniously did embezzle and fraudulently convert to his own use without the consent of the said Salem savings bank, whereby and by force of the statute in such case made and provided the said Clarence Murphy is deemed to have committed the crime of simple larceny; and so the jurors aforesaid upon their oath aforesaid do say and present that the said Clarence Murphy then and there, in manner and form aforesaid, the said money, of the property and moneys of the said Salem savings bank, from the said Salem savings bank feloniously did steal, take, and carry away, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

(Thereafter follow sixty-three counts in all respects similar to the foregoing, except that the dates of the offences and the number of dollars alleged therein to have been embezzled are different.)

This indictment was found at January term, 1896. When said Murphy was set to the bar and had this indictment read to him, he said that thereof he was not guilty, and for trial put him-
6 self upon the country, and the case was continued to this term; and now said Murphy moves that said indictment be quashed; which motion is allowed by the court as to the first sixty-five counts of said indictment and overruled as to all remaining counts. A jury is thereupon impanelled and sworn to try the issue, viz., William D. Gardner, foreman, and fellows, viz., J. Warren Berry, Daniel W. Eaton, Walter F. Gould, George E. McDonald, William McGinley, William F. Marston, Austin Shackelford, Luther G. Morrison, Lysander N. Nichols, George M. Norris, Jonathan F. Ober, who, after hearing all matters and things concerning the same, return their verdict and upon their oath do say that said Murphy is guilty on each and every count from the sixty-sixth count to close of said indictment, inclusive.

It is therefore considered by the court that said Clarence Murphy be punished by imprisonment for the term of not less than ten years nor more than fifteen years, one day thereof to be in solitary confinement, the residue at hard labor, and that this sentence be executed upon him in the State prison at Boston, in the county of Suffolk, and that he stand committed in execution of this sentence.

Sentence passed May 29, 1896.

On June 8, 1898, a writ of error was issued out of the supreme judicial court for the Commonwealth of Massachusetts in this case in terms as follows:

7 *Writ of Error.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss.:*

To our trusty and well-beloved Albert Mason, Esquire, chief justice of our superior court, Greeting:

Because in the record and proceedings and also in the rendition of judgment, between us, The Commonwealth of Massachusetts and Clarence Murphy, in an indictment that was prosecuted in our superior court held at Salem, within and for the county of Essex, on the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-six, manifest error hath happened, as it is said, to the great damage of the said Clarence Murphy, as by his complaint we are informed, we, willing that the error, if any hath been, should be duly amended and full and speedy justice done therein to the said parties, do command you that, if the judgment be therein rendered, you distinctly and openly send us the record and process of the suit aforesaid, with all things touching them, under your seal, together with this writ, so that we may have them before our justices of our supreme judicial court, to be held at Boston, within and for the county of Suffolk, on the first Monday of July next, that, inspecting the record and process aforesaid, we may, for correcting that error therein, further cause to be done what of right and according to law shall be to be done.

Witness Walbridge A. Feild, Esquire, at Boston, this eighth
8 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

C. H. COOPER,
Assistant Clerk.

On June 13, 1898, said writ was served in this court and the following return made thereon:

ESSEX, *ss.:*

Pursuant to the precept of this writ, to me directed, I herewith send the record and process of the suit and process within mentioned, with all things touching the same, all of which are hereunto annexed, to the honorable the justices of the supreme judicial court within named.

In testimony whereof I hereunto put my hand and seal this thirteenth day of June, 1898.

ALBERT MASON,
Chief Justice of the Superior Court.

The record and all things mentioned in said return were the record hereinbefore set forth, which was annexed to said return.

Said case was continued for the judgment of the supreme judicial court until the sixth day of January, A. D. 1899, when said supreme judicial court ordered the following entry to be made:

"The full court reverses the sentence of the superior court for the county of Essex in the case of The Commonwealth *vs.* said
9 Clarence Murphy, and orders the same remanded to said superior court for sentence by that court according to the law as it was before the Statute 1895, ch. 504, took effect, and a certified copy of this rescript be sent by the clerk of the supreme judicial court for the county of Suffolk to the superior court for the county of Essex."

A certified copy of said rescript was thereupon filed with the clerk of the superior court for the county of Essex, bearing the teste of the clerk of said supreme judicial court.

Thereupon it is considered by this court that the said Clarence Murphy be punished by imprisonment for the term of nine years ten months and twenty-one days, the first day thereof to be in solitary confinement and the residue at hard labor, and that this sentence be executed upon him in the State prison in Boston, in the county of Suffolk, and that he stand committed in execution of this sentence.

Sentence passed January 7, 1899.

To which the said Clarence Murphy alleged exceptions, which were allowed by this court, and the case was continued for the judgment of the supreme judicial court. Said exceptions were as follows:

10 *Defendant's Bill of Exceptions.*

On May 28, 1896, the defendant in the above-entitled case, a citizen of the Commonwealth of Massachusetts and of the United States, was tried on an indictment which charged the defendant in 64 counts with the embezzlement of different sums of money on different days between July 19, 1892, and November 29, 1893, contrary to the provisions of section 40 of chapter 203 of the Public Statutes of this Commonwealth. The first count of said indictment was as follows:

(Here follows a copy of the first count aforesaid of the indictment.)

The remaining counts of said indictment differed from said first count only in the dates of the offences and the numbers of dollars.

The defendant was found guilty on each and every count of this indictment, and on May 29, 1896, was sentenced, under chapter 504

of the acts of this Commonwealth for 1895, to imprisonment in the State's prison of the Commonwealth at Boston for the term of not less than ten nor more than fifteen years, one day thereof to be in solitary confinement and the residue at hard labor, and on said day the defendant, in execution of said sentence, was committed to said prison.

The defendant, in execution of said sentence, remained in said prison for one day in solitary confinement, and remained in said prison continuously from May 29, 1896, to January 7, 1899.

On June 8, 1898, the defendant petitioned to the supreme
11 judicial court for a writ of error, assigning for cause that said chapter 504, as applied to the offences aforesaid, was contrary to the provisions of the Constitution of the United States and of this Commonwealth. On said petition a writ of error issued, and upon consideration thereof the supreme judicial court, on January 3, 1899, reversed said judgment sentencing this defendant and ordered that his cause be remanded to the superior court, and that he be resentenced in accordance with the law as it existed prior to the passage of said chapter 504.

On January 7, 1899, pursuant to said decision and the rescript issued thereon, the defendant was brought before this court and resentenced for the same offences for which the original sentence aforesaid had been imposed, which last sentence was to the said State's prison of the Commonwealth, at Boston, for the term of nine years ten months and twenty-nine days, the first day thereof to be in solitary confinement and the residue at hard labor.

Just prior to imposing said last sentence the court stated to the attorney for the defendant that as the defendant had already suffered one term of solitary confinement for the offences for which he was now to be sentenced, it would prefer not to resentence the defendant to solitary confinement, and that it would not sentence to solitary confinement if the attorney for the defendant would file a written waiver by the prisoner of such provision; but the attorney for the defendant stated that he did not feel justified in filing such a waiver.

The defendant duly excepted to said sentence last imposed and requested that all his rights be reserved, meaning thereby, but it was not so stated to the court at the time, that he excepted to said sentence on the ground that he had already been in jeopardy
12 for the same offence; that said sentence abridged the privileges and immunities of the defendant as a citizen of the United States and deprived him of his liberty without due process of law; that said sentence was in violation of the defendant's rights under article 14 of the amendments to the Constitution of the United States; that the court could not lawfully sentence him to the State's prison for said time or to solitary confinement; that the court could not lawfully resentence him in any manner, and that said sentence was contrary to the provisions of the constitution of this Commonwealth and of the Constitution of the United States; which request the court granted and reserved all the defendant's rights to except to said sentence.

The defendant prays that said exceptions may be allowed.
By his attorneys, BRANDEIS, DUNBAR AND NUTTER.

Allowed.
EDGAR J. SHERMAN,
Justice Superior Court.

At the September term, 1899, to wit, October, 1899, these exceptions were overruled by said supreme judicial court and the following rescript filed with this superior court:

Rescript.

In the case of The Commonwealth *vs.* Murphy, pending in the superior court for the county of Essex, ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz: "Exceptions overruled."
By the court:
HENRY A. CLAPP.

October 19, 1899.

Brief Statement of the Grounds and Reasons of the Decision.

13 The defendant was not put in jeopardy twice by the resentence, and his constitutional rights have not been abridged or interfered with. See opinion.

The opinion of said supreme judicial court mentioned in said rescript, with the certificate of the reporter of decisions of said court, is as follows:

14 COMMONWEALTH OF MASSACHUSETTS,
BOSTON, *November* 25, 1899.

I certify the annexed to be a true copy of the opinion of the supreme judicial court in the case of Commonwealth *vs.* Murphy, decided on the 19th day of October, 1899.

GEO. F. TUCKER,
Reporter of Decisions.

15 COMMONWEALTH
v.
MURPHY.

MORTON, *J.:*

The defendant in this case was the plaintiff in error in the case of Murphy *v.* Commonwealth, 172 Mass., 264. In that case it was held that the statute under which he was sentenced was unconstitutional so far as it related to past offences, and the sentence which had been imposed was reversed and the case remanded to the superior court, under Pub. St., c. 187, sec. 13, for sentence according to the law as it was when the offence was committed and before the statute under which he was sentenced took effect. The defendant was brought before the superior court on January 7, 1899, pursuant to

that decision, and resentenced, the sentence being to the State prison for nine years ten months and twenty-nine days, the first day solitary and the rest at hard labor. Under the previous sentence he had been sentenced to the State prison for not less than ten nor more than fifteen years, the first day to be in solitary confinement. When he was resentenced he had served the solitary confinement and two years seven months and ten days under the original sentence. Prior to imposing the last sentence the court said that as defendant had already served the term of solitary confinement, he would prefer not to resentence him to solitary confinement if a written waiver thereof was filed by defendant's attorney. The attorney stated that he did not feel justified in filing such waiver, and thereupon sentence was imposed as aforesaid. The defendant duly excepted to the imposition of the last sentence, and requested that all his rights might be reserved, which was done.

16 The contention of the defendant is in substance that one who has been sentenced by a court having jurisdiction of the offence and of the person and the right to sentence to the place designated, and who has served a substantial portion of the time for which he was sentenced, cannot be resentenced if it turns out on a writ of error brought by him that the original sentence was unlawful. He contends in his own case that the resentence constituted a second punishment for the same offence; that he has been twice put in jeopardy thereby and has been deprived of his constitutional rights.

The statute under which the case was remanded contains no limitation on the power to remand for sentence in case of a reversal for error, but it is manifest that it cannot authorize the imposition of another sentence under such circumstances as would make it an interference with the constitutional rights of the prisoner. The question, then, is, Was the effect of the last sentence to put the defendant in jeopardy twice, or to punish him again for the same offence, or to abridge his privileges and immunities as a citizen of the United States?

By jeopardy is meant, we think, lawful jeopardy from the commencement of the proceedings until their termination by a proper judgment and sentence, or acquittal, or what the law regards as such. It has been held in numerous cases that where, either for want of jurisdiction or from some defect in the indictment, or from such error in the course of the proceedings, the verdict has been set aside or the judgment has been arrested on a writ of error brought by the defendant, or on a motion made by him, and

17 he has been tried again, he was not thereby put in jeopardy a second time and his constitutional rights were not abridged. Commonwealth *v.* Wheeler, 2 Mass., 174; Commonwealth *v.* Peters, 12 Met., 387; Commonwealth *v.* Roby, 12 Pick., 496, 502; Commonwealth *v.* Lahy, 8 Gray, 459; Commonwealth *v.* Gould, 12 Gray, 171; McKee *v.* The People, 32 N. Y., 239; The People *v.* McKay, 18 Johns., 212; State *v.* Walters, 16 La. Ann., 400; Jones *v.* State, 15 Ark., 261; Turner *v.* State, 40 Ala., 21; Gerard *v.* People, 4 Ill. (3 Scam.), 362; State *v.* Redman, 17 Iowa, 329; State *v.* Sutton, 4 Gill. (Md.), 494;

Cooley's Const. Lim., 3rd ed., 327; Sedgwick on Stat. & Const. Law, 2nd ed., 572, 573, n. (*a*). One ground on which such a conclusion has been reached is that by bringing the writ of error or making the motion he is deemed to have waived any constitutional objection that he might have had to another trial or to the entry of a proper judgment. 2 Bishop Crim. Law, 2nd ed., secs. 672 *et seq.* If a second trial where the verdict has been set aside or the judgment arrested does not constitute legal jeopardy, it is difficult to see how the fact that a party may have served a portion of the sentence that has been set aside for error on proceedings instituted by him can rightfully object to the imposition of another and a lawful sentence by the court to which the case has been remanded. In this case the trial and conviction were, for aught that appears, regular and legal in all respects. The only error was in the sentence. It would be strange if there was no power anywhere to correct or to authorize the correction of the error on proceedings instituted by the prisoner except at the risk of delivering him from any further punishment for the offence of which he has been convicted. It is said in
18 McKee *v.* The People, 32 N. Y., 239, 245, where the case was remanded under a statute similar to ours, that the term jeopardy "has no relation to the reversal of an erroneous judgment and pronouncing a legal one pursuant to a legal conviction." And in Jeffries *v.* State, 40 Ala., 381, it was held that a prisoner could not plead *autre fois convict*, if the former conviction had been reversed on proceedings instituted by himself, notwithstanding he had served a part of the term of his imprisonment before the reversal. See also Jones *v.* State, 15 Ark., 261. In criminal proceedings the sentence is the judgment or at least an essential part of it.

Though the sentence in this case was in excess of the jurisdiction, it was not void, but voidable (Sennot's case, 146 Mass., 489; *Ex parte* Lange, 18 Wall., 163, 174), and if the defendant had completed the term for which he was sentenced he would have paid the penalty required and could not have been imprisoned or punished again for the same offence. Commonwealth *v.* Loud, 3 Met., 323. To that extent the sentence was lawful until reversed. Sennott's case, *supra;* Regina *v.* Drury, 3 C. & K., 193. Except for the statute authorizing the case to be remanded, he would have been entitled to a discharge, not because to resentence him was unconstitutional, but because at common law the court from which the writ of error issued could not itself pronounce the proper judgment or sentence or send back the case to the inferior court to do so. Shepard *v.* Commonwealth, 2 Met., 419; The King *v.* Bonner, 7 A. & E., 58; The King *v.* Ellis, 5 B. & C., 395. But a judgment and sentence reversed are the same as if there had been no judgment and sentence (Regina *v* Drury, *supra*), and this must be so even if the prisoner has served a
19 part of the sentence. Whether the confinement under the reversed sentence has been longer or shorter can on principle make no difference. Besides, the length of such confinement will depend somewhat, at least, on the promptness with which proceedings are instituted to secure a reversal. No doubt it would have been competent for the court to order that the last sentence should

take effect from the date of the first sentence (Jacquins *v.* Commonwealth, 9 Cush., 279), but we do not think that it was bound to do so, and though the effect of the resentence will be to compel the defendant to suffer solitary confinement twice, and will result, it is said, in his actual confinement for a longer period than the term for which he was originally sentenced, we do not see, for reasons already given, that the last sentence is rendered invalid thereby. The case is not one of the imposition of a second sentence for the same offence, or of the attempted correction of a sentence after the term has ended at which it was imposed and the court has adjourned without day—see Commonwealth *v.* Foster, 122 Mass., 317, 323—but it is a case where the sentence that was originally imposed has been reversed and declared unlawful upon a writ of error brought by the party aggrieved and the case has been remanded, as provided by statute, to the superior court for sentence according to the law as it was when the offence was committed. Cases in regard to the imposition of a second sentence as such, or in regard to the attempted correction of a sentence after the adjournment of the court, or the substitution of one sentence for another, do not apply. The defendant relies upon *Ex parte* Lange, 18 Wall., 163, and Feeley's case, 12 Cush., 598. In *Ex parte* Lange, *supra*, the statute
20 authorized fine or imprisonment, but the court imposed both. The prisoner paid the fine, and after it had been paid the court, at the same term, attempted to modify the sentence by changing it to imprisonment and substituting the sentence as thus modified for the original sentence of fine and imprisonment; but the supreme court held that the prisoner, having satisfied one of the alternative penalties provided by the statute, the sentence could not be changed and the other alternative penalty imposed. Manifestly that case is not like this. Feeley's case, *supra*, was much the same. The statute provided fine or imprisonment. The court imposed both, and the prisoner paid the fine and was committed pursuant to the other part of the sentence, and then petitioned for a writ of *habeas corpus* on the ground that he was unlawfully restrained of his liberty. This court granted the writ and ordered his discharge, on the ground that he had paid the fine, and the court below had no power to impose imprisonment. It is manifest that this case also does not help the defendant. The course that was followed in Murphy *v.* Commonwealth, *supra*, seems to have been followed in the Supreme Court of the United States, and apparently was not regarded as putting the prisoner in jeopardy or punishing him twice or as interfering with his constitutional rights. *In re* Bonner, 151 U. S., 242, 262; Reynolds *v.* United States, 98 U. S., 145, 168, note; Coleman *v.* United States, 97 U. S., 509, 519.

We do not discover in what has been done anything by which the privileges or immunities of the defendant as a citizen of the United States *has* been abridged in violation of the fourteenth amendment. The equal protection of the laws has not been
21 denied to him, and he has not been deprived of his liberty without due process of law. *Ex parte* Converse, 137 U. S., 624; Moore *v.* Missouri, 159 U. S., 673.

The fact that the court in Murphy *v.* Commonwealth, *supra*, may have taken a somewhat different view of St. 1895, c. 504, from that taken in Commonwealth *v.* Brown, 167 Mass., 144, does not constitute an interference with the defendant's rights.

Exceptions overruled.

22 [Endorsed:] Commonwealth *vs.* Murphy. Certified copy of the opinion of the supreme judicial court.

23 On December 23, 1899, said Clarence Murphy filed in this superior court an assignment of errors in this case and a petition for the allowance of a writ of error to this court, returnable to the Supreme Court of the United States, which is as follows:

Petition for Allowance of Writ of Error and Assignment of Error.

To the Honorable Albert Mason, Esquire, chief justice of the superior court of the Commonwealth of Massachusetts, now sitting at Salem, within and for the county of Essex:

Respectfully represents the petitioner, Clarence Murphy, that in the final judgment and sentence of this court in the above-entitled cause manifest error has been committed, and that said judgment and sentence are in said respects contrary to the Constitution of the United States, and assigns as errors in the judgment and the sentence aforesaid the following:

1. They are contrary to the provisions of the Constitution of the United States.

2. They deprive the petitioner of his liberty without due process of law, contrary to the provisions of article 14 of the amendments of said Constitution.

3. They abridge the privileges and immunities of the petitioner as a citizen of the United States, contrary to the provisions
24 of article 14 of the amendments of said Constitution.

4. They subject him to punishment under an *ex post facto* law, contrary to the provisions of section 10 of article I of said Constitution.

5. By them the petitioner suffers punishment twice for the same offence, and is placed twice in jeopardy therefor, contrary to articles 5 and 14 of the amendments of said Constitution.

6. By them the petitioner is compelled to suffer punishment under chapter 203 of the Public Statutes of Massachusetts, which the supreme judicial court of Massachusetts has held since his conviction to be not applicable to the punishment of the petitioner's offence after the passage of chapter 504 of the Acts of the Year 1895, and this although the petitioner has already suffered punishment under this latter act while it was still held applicable to his alleged offence.

7. By them the petitioner suffers a punishment which has been substantially changed since his conviction, after he has once suffered punishment for the same offence under chapter 504 of the Acts of 1895, which was then applicable to his offence.

8. By them the petitioner is compelled to suffer the punishment of solitary confinement twice for the same offence.

Wherefore the petitioner prays that a writ of error to this court, returnable to the Supreme Court of the United States, be allowed to him.

By his attorneys, BRANDEIS, DUNBAR & NUTTER.

25 A bond was thereupon filed in this court, and approved by the chief justice thereof, in terms following:

Bond on Writ of Error.

Know all men by these presents that we, Clarence Murphy, of Salem, in the county of Essex, and James F. Dean, of said Salem, and Felix Conlan, of Cambridge, in the county of Middlesex, are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of five hundred dollars, to be paid to the said Commonwealth and its certain attorney; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a superior court of said Commonwealth, in a criminal prosecution depending in said court between said Commonwealth and said Clarence Murphy, as defendant, judgment was rendered against the said Clarence Murphy, and the said Clarence Murphy having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of January next:

Now, the condition of the above obligation is such that if the said Clarence Murphy shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

CLARENCE MURPHY. [L. S.]
JAMES F. DEAN. [L. S.]
FELIX CONLAN. [L. S.]

Signed, sealed, and delivered in presence of—
ELIZA J. MURPHY.

Approved:
E. B. GEORGE,
Clerk of Superior Court of Essex County, Massachusetts.
ALBERT MASON,
Chief Justice Superior Court.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the superior court of the Commonwealth of Massachusetts for the county of Essex.

Attest: E. B. GEORGE,
Clerk Superior Court.

26 The Commonwealth of Massachusetts consents that the penal sum of this bond in the case therein mentioned be five hundred dollars, and does not care to be present or represented at the examination of the sureties.

J. M. HALLOWELL,
Ass't Attorney General for the Com. of Mass.

27 The foregoing writ of error was thereupon allowed and the following original citation issued and served, as appears therein:

The United States of America to the Commonwealth of Massachusetts and its attorney general, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the United States Supreme Court, wherein Clarence Murphy is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert Mason, Esq., this twenty-sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Superior Court.]

ALBERT MASON,
Chief Justice of the Superior Court of the Commonwealth of Massachusetts.

Due and sufficient service of this citation on the Commonwealth of Massachusetts and its attorney general is hereby accepted and acknowledged.

ARTHUR W. DE GOOSH,
Ass't Attorney General for the Commonwealth of Massachusetts.

28 I, E. B. George, the clerk of the superior court of the Commonwealth of Massachusetts for the county of Essex, hereby certify that the foregoing is a true copy of the record in this court in the case of The Commonwealth against Clarence Murphy, described in the foregoing writ of error, together with original citation issued thereon.

Witness my hand and the seal of this superior court this twenty-sixth day of December, 1899.

[Seal of the Superior Court.]

E. B. GEORGE.

Endorsed on cover: File No., 17,594. Massachusetts superior court. Term No., 480. Clarence Murphy, plaintiff in error, *vs.* The Commonwealth of Massachusetts. Filed December 29th, 1899.